

CORPORATE INTEGRITY AGREEMENT
BETWEEN THE
OFFICE OF INSPECTOR GENERAL
OF THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
AND
THE DEVEREUX FOUNDATION

I. PREAMBLE

The Devereux Foundation, ("Devereux") hereby enters into this Corporate Integrity Agreement ("CIA" or "Agreement") with the Office of Inspector General ("OIG") of the United States Department of Health and Human Services ("HHS") to ensure compliance by its physicians, employees, and independent contractors and agents who are involved in the provision of health care services or are involved in the preparation or submission of claims (including billing and coding) or cost reports for health care services, with the requirements of Medicare, Medicaid and all other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f))(hereinafter collectively referred to as the "Federal health care programs."). Devereux is a private nonprofit corporation headquartered in Devon, Pennsylvania, in the business of providing, among other services, residential therapeutic child care services through various Devereux Centers (including Devereux Center of Georgia) located throughout the United States. Devereux's compliance with the terms and conditions in this CIA shall constitute an element of Devereux's present responsibility with regard to participation in the Federal

health care programs. Contemporaneously with this CIA, Devereux is entering into a Settlement Agreement with the United States, and this CIA is incorporated by reference into the Settlement Agreement.

II. TERM OF THE CIA

The period of the compliance obligations assumed by Devereux under this CIA shall be three (3) years from the effective date of this CIA (unless otherwise specified). The effective date of this CIA will be the date on which the final signatory of this CIA executes this CIA.

III. CORPORATE INTEGRITY OBLIGATIONS

Devereux represents that in October, 1998 it formally commenced a Corporate Compliance Program ("Program") to ensure that it "provides high quality human services to its clients in an ethical and respectful manner." Therefore, pursuant to and for the duration of this CIA, Devereux agrees to maintain in full operation its current Program and to amend the Program to ensure that it meets or adheres to the following elements or requirements. As further set forth below certain obligations of this CIA shall apply only to Devereux Center of Georgia and/or certain limited portions of Devereux (e.g., Devereux corporate headquarters). Unless otherwise noted below, the obligations of this CIA shall apply to Devereux and all its subsidiaries and affiliates.

A. Compliance Officer. Devereux has designated, and shall continue for the term of this CIA to designate an individual to serve as Compliance Officer who is and shall be responsible for developing and implementing policies, procedures, and practices designed to ensure compliance with the requirements set forth in this CIA and with the requirements of the Federal health care programs. The Compliance Officer is and shall continue for the term of this CIA to be a member of senior management of Devereux, shall continue for the term of this CIA to make periodic reports regarding compliance matters directly to the CEO and to the Devereux Board of Trustees Audit and Compliance

Committee and shall be authorized to report to the Board of Trustees at any time. The Compliance Officer is and shall be responsible for monitoring the day-to-day activities engaged in by Devereux to further its compliance objectives as well as any reporting obligations created under this CIA. In the event a new Compliance Officer is appointed during the term of this CIA, Devereux shall notify the OIG, in writing, within fifteen (15) days of such a change.

B. Written Standards.

1. *Code of Conduct.* Dexereux represents that it has established under its Program a "Standards of Conduct" (hereinafter referred to as "Code of Conduct"). Devereux shall continue to maintain its Code of Conduct for the term of this CIA and, to the extent necessary amend the Code of Conduct to ensure that it meets the following requirements. The Code of Conduct shall be distributed to all employees (including but not limited to employed physicians) within one hundred twenty (120) days of the effective date of this CIA, and shall be attached to and incorporated in all contracts hereinafter entered into between Devereux and non-employee physicians, independent contractors or agents who participate in the provision of, or preparation or submission of Devereux cost reports for, health care services (hereinafter all of the above collectively referred to as "Covered Persons"). Devereux shall make the promotion of, and adherence to, the Code of Conduct an element in evaluating the performance of managers, supervisors, and all other employees. The Code of Conduct shall, at a minimum, set forth:

- a. Devereux's commitment to full compliance with all statutes, regulations, and guidelines applicable to Federal health care programs, including its commitment to prepare and submit accurate billings and/or cost reports consistent with Federal health care program regulations and procedures or instructions otherwise

communicated by the Health Care Financing Administration ("HCFA") (or other appropriate regulatory agencies) and/or its agents;

- b. Devereux's requirement that all of its Covered Persons shall be expected to comply with all statutes, regulations, and guidelines applicable to Federal health care programs and with Devereux's own policies and procedures (including the requirements of this CIA);
- c. the requirement that all of Devereux's Covered Persons shall be expected to report suspected violations of any statute, regulation, or guideline applicable to Federal health care programs or of Devereux's own policies and procedures;
- d. the possible consequences to both Devereux and to any Covered Person of failure to comply with all statutes, regulations, and guidelines applicable to Federal health care programs and with Devereux's own policies and procedures or of failure to report such non-compliance; and
- e. the right of all Covered Persons to use the Confidential Disclosure Program, as well as Devereux's commitment to confidentiality and non-retaliation with respect to disclosures.

Within one hundred and twenty (120) days of the effective date of the CIA, each Covered Person, with the exception of non-employed physicians and those physicians' employees who fall within the definition of Covered Person, shall certify, in writing, that he or she has received, read, understands, and will abide by Devereux's Code of Conduct, as amended. Devereux shall use best efforts to ensure that non-employed physicians who fall within the definition of Covered Person certify in writing that they have received, read, understand and will abide by Devereux's Code of Conduct, as amended. New

Covered Persons shall receive the Code of Conduct and shall complete the required certification within two (2) weeks after the commencement of their employment or contract or within one hundred and twenty (120) days of the effective date of the CIA, whichever is later.

Devereux will annually review the Code of Conduct and will make any necessary revisions. These revisions shall be distributed within thirty (30) days of initiating such a change. Covered Persons shall certify on an annual basis that they have received, read, understand and will abide by the Code of Conduct.

2. *Policies and Procedures.* Within one hundred and twenty (120) days of the effective date of this CIA, Devereux shall develop and initiate implementation of written Policies and Procedures regarding the operation of Devereux's compliance program and its compliance with all federal and state health care statutes, regulations, and guidelines, including the requirements of the Federal health care programs. At a minimum, the Policies and Procedures shall specifically address the proper submission of cost reports under Medicaid and the Therapeutic Residential Intervention Services ("TRIS") program, and with respect to the application of these policies and procedures to Georgia, and Multi-Agency Team for Children ("MATCH") program as administered by the Georgia Department of Human Resources. Specifically, the policies and procedures, at a minimum, shall address the proper submission of personnel costs; contractor, consultant and personal services costs; travel costs; and shall address unallowable costs such as entertainment and fundraising. In addition, the Policies and Procedures shall include disciplinary guidelines and methods for employees to make disclosures or otherwise report on compliance issues to Devereux management through the Confidential Disclosure Program required by section III.E. Devereux shall assess and update as necessary the Policies and Procedures at least annually and more frequently, as appropriate. A summary of the Policies and Procedures will be provided to OIG in the

Implementation Report. The Policies and Procedures will be available to OIG upon request.

Within one hundred and twenty (120) days of the effective date of the CIA, the relevant portions of the Policies and Procedures shall be distributed to all appropriate Covered Persons. Compliance staff or supervisors should be available to explain any and all policies and procedures. The obligations of section III.B.2 shall apply to Devereux corporate headquarters and Devereux Center of Georgia only.

C. Training and Education.

1. *General Training.* Devereux represents that as of March 1, 1999, Devereux has required and provided one and one half (1 ½) hour of compliance training to each and every Devereux employee. Devereux has put into place a process of providing one hour of annual refresher compliance training to all Devereux employees. Within one hundred and eighty (180) days of the effective date of this CIA, Devereux shall provide at least one (1) additional hour of training to each Covered Person. This general training shall explain Devereux's:

- a. Corporate Integrity Agreement requirements;
- b. Compliance Program to the extent it has been amended pursuant to this CIA (including the Policies and Procedures as they pertain to general compliance issues); and
- c. Code of Conduct to the extent it has been amended pursuant to this CIA.

These training material shall be made available to the OIG, upon request.

New Covered Persons shall receive the general training described above within thirty (30) days of the beginning of their employment or contract or within one hundred twenty (120) days after the effective date of this CIA, whichever is later. Every Covered Person shall receive such general training on an annual basis.

2. *Specific Training.* Within one hundred and twenty (120) days of the effective date of this CIA, each Covered Person who participates in the preparation or submission of cost reports related to services provided under the TRIS and MATCH program or any Federal health care programs shall receive at least five (5) hours of training in addition to the general training required above. This training shall include a discussion of:

- a. the submission of accurate cost reports to Federal health care programs and the TRIS and/or MATCH program;
- b. policies, procedures and other requirements applicable to the submission of cost reports;
- c. the personal obligation of each individual involved in the cost reporting process to ensure that such cost reports are accurate;
- d. applicable cost reporting rules and statutes;
- e. the legal sanctions for improper cost reports; and
- f. examples of proper and improper cost reports.

These training materials shall be made available to OIG, upon request. Persons providing the training must be knowledgeable about the subject area.

Affected new Covered Persons shall receive this training within thirty (30) days of the beginning of their employment or within one hundred and twenty (120) days of the effective date of this CIA, whichever is later. If a new Covered Person has any responsibility for the preparation or submission of cost reports prior to completing this specific training, a Devereux Covered Person who has completed the substantive training shall review all of the untrained person's work regarding the preparation and submission of cost reports.

Every affected Covered Person shall receive such specific training on an annual basis. The obligations of section III.C.2 shall apply to Devereux corporate headquarters and Devereux Center of Georgia only.

3. *Certification.* Each Covered Person shall certify, in writing, that he or she has attended the required training. The certification shall specify the type of training received and the date received. The Compliance Officer shall retain the certifications, along with specific course materials. These shall be made available to OIG upon request.

D. Review Procedures. Devereux shall retain an entity, such as an accounting, auditing or consulting firm (hereinafter "Independent Review Organization"), to perform review procedures to assist Devereux and the OIG in assessing the adequacy of its reimbursement and compliance practices pursuant to this CIA. This shall be an annual requirement and shall cover a twelve (12) month period. The Independent Review Organization must have expertise in the billing, coding, reporting and other requirements of the Federal health care programs from which Devereux seeks reimbursement. The Independent Review Organization must be retained to conduct the engagement of the first year within ninety (90) days of the effective date of this CIA.

The Independent Review Organization will conduct two separate engagements. One will be an analysis of Devereux's cost reporting to the Federal health care programs to assist Devereux and OIG in determining compliance with all applicable statutes, regulations, and directives/guidance ("cost reporting engagement"). The second engagement will determine whether Devereux is in compliance with this CIA ("compliance engagement").

1. *Cost Reporting Engagement.* The cost reporting engagement shall consist of a review of a random sample of 10% of all cost reports filed by Devereux in the period being audited. The sample must be selected through random numbers. The IRO shall perform agreed-upon-procedures on an agreed-upon sampling of non-salary direct

expenses incurred by Devereux and its various Devereux Centers selected in the sample to assist the parties in determining that the expenses as reported in the facility's financial statements are accurately summarized in cost reports and that the cost reports are filed in accordance with Federal health care program requirements. The IRO shall review the sample of cost reports for the following issues under the following procedures:

a. Agreed Upon Sampling of Non Salary Direct Expenses: For the non salary direct expenses sample, obtain the voucher package for each selected disbursement from the sample cost reports:

1. Verify the disbursement is properly supported by noting the following:
 - a. Requisition, Business Expense Reports or Check request is properly authorized;
 - b. Purchase Order or Contract is properly authorized;
 - c. Purchase Order or Contract agrees with requisition with regard to item, quantity and price or any variance has received appropriate authorization;
 - d. Vendor invoice agree agrees with Purchase Order, Contract or Check Request with regard to any item, quantity and price or any variance has received appropriate authorization;
 - e. Vendor invoice agrees with receiving report or shipping documents, if appropriate, with regard to item and quantity;
 - f. Receiving report is signed by receiving or requisitioning department; and
 - g. Price extension and total balance of vendor invoice, Business Expense report or check request are accurate. If disbursement is supported by a Business Expense Report or a check request, ascertain that adequate supporting documentation exists.

2. Review the accounts payable invoice, Business Expense Report or check request as appropriate for the following: The computer system agrees with vendor invoice with regard to invoice number, invoice date, purchase order number and price.
3. Trace amount of expense from the accounts payable distribution to the general ledger;

b. Unallowable Costs: Review the cost reports for the following potentially unallowable expenses:

- a. Lobbying expenses;
- b. Political contributions;
- c. Medical office buildings;
- d. Non-reimbursable cost centers;
- e. Special event costs; and
- f. Fundraising expenses

Each annual cost reporting engagement analysis shall include the following components in its methodology:

- a. Cost Reporting Engagement Objective: A clear statement of the objective intended to be achieved by the cost reporting engagement and the procedure or combination of procedures that will be applied to achieve the objective.
- b. Cost Reporting Engagement Population: Identify the population, which is the group about which information is needed. Explain the methodology used to develop the population and provide the basis for this determination.
- c. Sources of Data: Provide a full description of the source of the information upon which the cost reporting engagement conclusions

will be based, including the legal or other standards applied, documents relied upon, payment data, and/or any contractual obligations.

d. Sampling Unit: Define the sampling unit, which is any of the designated elements that comprise the population of interest.

e. Sampling Frame: Identify the sampling frame, which is the totality of the sampling units from which the sample will be selected.

The cost reporting engagement shall provide:

- a. findings to assist Devereux and the OIG in assessing whether Devereux is submitting accurate cost reports for services billed to the Federal health care programs.
- b. findings regarding Devereux's procedures to correct inaccurate cost reports to the Federal health care programs; and
- c. findings regarding the steps Devereux is taking to bring its operations into compliance or to correct problems identified by the audit;

2. *Compliance Engagement.* An Independent Review Organization shall also conduct a compliance engagement, that shall provide findings regarding whether Devereux's program, policies, procedures, and operations comply with the terms of this CIA. This engagement shall include section by section findings regarding the requirements of this CIA.

A complete copy of the Independent Review Organization's cost reporting and compliance engagement shall be included in each of Devereux's Annual Reports to OIG.

3. *Verification/Validation.* In the event that the OIG has reason to believe that Devereux's cost reporting engagement fails to conform to its obligations under the CIA or indicates improper cost reports not otherwise adequately addressed in the audit

report, and thus determines that it is necessary to conduct an independent review to determine whether or the extent to which Devereux is complying with its obligations under this CIA, Devereux agrees to pay for the reasonable cost of any such review or engagement by the OIG or any of its designated agents.

E. Confidential Disclosure Program. Devereux has established and shall continue for the term of this CIA to maintain its Confidential Disclosure Program, enabling employees, contractors, agents or other individuals to communicate about compliance issues to the Compliance Officer. The Confidential Disclosure Program includes, and shall continue for the term of this CIA to include measures (e.g., a toll-free compliance telephone line) to enable employees, contractors, agents or other individuals to disclose, to the Compliance Officer or some other person who is not in the reporting individual's chain of command, any identified issues or questions associated with Devereux's policies, practices or procedures with respect to the Federal health care program, believed by the individual to be inappropriate. Devereux shall publicize the existence of the hotline (e.g., e-mail to employees or post hotline number in prominent common areas).

The Confidential Disclosure Program emphasizes, and shall continue for the term of the CIA to emphasize, a non-retribution, non-retaliation policy, and shall include a reporting mechanism for anonymous, confidential communication. Upon receipt of a complaint, the Compliance Officer (or designee) shall gather the information in such a way as to elicit all relevant information from the individual reporting the alleged misconduct. The Compliance Officer (or designee) shall make a preliminary good faith inquiry into the allegations set forth in every disclosure to ensure that he or she has obtained all of the information necessary to determine whether a further review should be conducted. For any disclosure that is sufficiently specific so that it reasonably: (1) permits a determination of the appropriateness of the alleged improper practice, and (2) provides an opportunity for taking corrective action, Devereux shall conduct an internal

review of the allegations set forth in such a disclosure and ensure that proper follow-up is conducted.

The Compliance Officer shall maintain a confidential disclosure log, which shall include a record and summary of each allegation received, the status of the respective investigations, and any corrective action taken in response to the investigation. The Compliance Officer shall maintain all documentation related to information in the log and make such documents available for inspection by the OIG upon request.

F. Ineligible Persons.

1. *Definition.* For purposes of this CIA, an "Ineligible Person" shall be any individual or entity who: (i) is currently excluded, suspended, debarred or otherwise ineligible to participate in the Federal health care programs; or (ii) has been convicted of a criminal offense related to the provision of health care items or services and has not been reinstated in the Federal health care programs after a period of exclusion, suspension, debarment, or ineligibility.

2. *Screening Requirements.* Devereux shall not hire or engage as contractors any Ineligible Person. To prevent hiring or contracting with any Ineligible Person, Devereux shall screen all prospective employees and prospective contractors prior to engaging their services by (i) requiring applicants to disclose whether they are Ineligible Persons, and (ii) reviewing the General Services Administration's List of Parties Excluded from Federal Programs (available through the Internet at <http://www.arnet.gov/epls>) and the HHS/OIG List of Excluded Individuals/Entities (available through the Internet at <http://www.dhhs.gov/oig>) (these lists and reports will hereinafter be referred to as the "Exclusion Lists").

3. *Review and Removal Requirement.* Within one hundred and twenty (120) days of the effective date of this CIA, Devereux will review its list of current employees and contractors against the Exclusion Lists. Thereafter, Devereux will review

the list once semi-annually. If Devereux has notice that an employee, agent, or physician has become an Ineligible Person, Devereux will remove such person from responsibility for, or involvement with, Devereux's business operations related to the Federal health care programs and shall remove such person from any position for which the person's salary or the items or services rendered, ordered, or prescribed by the person are paid in whole or part, directly or indirectly, by Federal health care programs or otherwise with Federal funds at least until such time as the person is reinstated into participation in the Federal health care programs.

4. *Pending Charges and Proposed Exclusions.* If Devereux has actual notice that an employee or contractor is charged with a criminal offense related to any Federal health care program, or is suspended or proposed for exclusion during his or her employment or contract with Devereux, within 10 days of receiving such notice Devereux will remove such individual from responsibility for, or involvement with, Devereux's business operations related to the Federal health care programs until the resolution of such criminal action, suspension, or proposed exclusion.

G. Notification of Proceedings. Within thirty (30) days of discovery, Devereux shall notify OIG, in writing, of any ongoing investigation or legal proceeding conducted or brought by a governmental entity or its agents involving an allegation that Devereux has committed a crime or has engaged in fraudulent activities. This notification shall include a description of the allegation, the identity of the investigating or prosecuting agency, and the status of such investigation or legal proceeding. Devereux shall also provide written notice to OIG within thirty (30) days of the resolution of the matter, and shall provide OIG with a description of the findings and/or results of the proceedings, if any.

H. Reporting.

1. Material Deficiencies. If, as a result of the audits performed pursuant to section III. D, above, or through any other means, Devereux discovers any cost reporting or other policies, procedures and/or practices that result in a material deficiency, Devereux shall notify the appropriate payor (e.g, Medicare fiscal intermediary or carrier) within thirty (30) days of determining that the material deficiency exists and shall take remedial steps within sixty (60) days of that date (or such additional time as may be agreed to by the payor) to correct the problem, including steps to prevent the deficiency from reoccurring. The notice to the payor should state that the repayment is being made in accordance with the terms of this CIA and should include:

- a. the methodology by which the overpayment was determined;
- b. any claim specific information used to determine the overpayment;
- c. the amount of the overpayment; and
- d. the date of the check and check number (or electronic transaction number) on which the overpayment was repaid.

Contemporaneous with Devereux's notification to the payor as provided above, Devereux shall notify OIG of:

- a. all of the information provided to the payor in returning the overpayment;
- b. the name and the address of the payor where the overpayment was sent;
- c. Devereux's findings concerning the material deficiency;
- d. Devereux's actions to correct such material deficiency; and
- e. any further steps Devereux plans to take to address such material deficiency and prevent it from reoccurring.

For purposes of this CIA, a "material deficiency" shall mean anything that involves: (i) a substantial overpayment or improper payment relating to the Federal health care programs; or (ii) conduct or policies that clearly violate the Federal health care program statutes, regulations or directives issued by HCFA or other Federal health care

program regulators and/or their agents issuing payment to Devereux. A material deficiency may be the result of an isolated event or a series of occurrences.

2. *Overpayments.* If Devereux learns of any overpayment, regardless of its size and regardless of whether it results from a material deficiency, Devereux shall promptly (but in no event later than sixty (60) days after discovering the overpayment), bring such overpayment to the appropriate payor's attention, make appropriate refunds. Devereux shall also within 60 days of the discovery of the overpayment (or such additional time as may be agreed to by the payor) take any steps necessary to prevent similar future overpayments.

For purposes of this CIA, an "overpayment" shall mean the amount of money Devereux has received in excess of the amount due and payable under the Federal health care programs' statutes, regulations or program directives, including carrier and intermediary instructions.

IV. NEW LOCATIONS

In the event that Devereux purchases or establishes new business units after the effective date of this CIA, Devereux shall notify OIG of this fact within thirty (30) days of the date of purchase or establishment. This notification shall include the location of the new operation(s), phone number, fax number, Federal health care program provider number(s) (if any), and the corresponding payor(s) (contractor specific) that has issued each provider number. All employees at such locations shall be subject to the requirements in this CIA that apply to new employees (e.g., completing certifications and undergoing training).

V. IMPLEMENTATION AND ANNUAL REPORTS

A. Implementation Report. Within one hundred and fifty (150) days after the effective date of this CIA, Devereux shall submit a written report to OIG summarizing the

status of its implementation of the requirements of this CIA. This Implementation Report shall include:

1. the name, address, phone number and position description of the Compliance Officer required by section III.A;
2. a copy of Devereux's Code of Conduct required by section III.B.1;
3. the summary of the Policies and Procedures required by section III.B.2;
4. a description of the training programs required by section III.C including a description of the targeted audiences and a schedule of when the training sessions were held;
5. a certification by the Compliance Officer that:
 - a. the Policies and Procedures required by section III.B have been developed, are being implemented, and have been distributed to all pertinent Covered Persons;
 - b. all Covered Persons have completed the Code of Conduct certification required by section III.B.1; and
 - c. all Covered Persons have completed the training and executed the certification required by section III.C.
6. a description of the Confidential Disclosure Program required by section III.E;
7. the identity of the Independent Review Organization(s) and the proposed start and completion date of the first audit; and
8. a summary of personnel actions (other than hiring) taken pursuant to section III.F.
9. a listing of all of Devereux's locations (including locations and mailing addresses), the corresponding name under which each location is doing business, the corresponding phone numbers and fax numbers, each

location's Federal health care program provider identification number(s) and the payor (e.g., fiscal intermediary) that issued each provider identification number.

B. Annual Reports. Devereux shall submit to OIG an Annual Report with respect to the status and findings of Devereux's compliance activities. The Annual Reports shall include:

1. any change in the identity or position description of the Compliance Officer;
2. a certification by the Compliance Officer that:
 - a. all Covered Persons have completed the annual Code of Conduct certification required by section III.B.1; and
 - b. all Covered Persons have completed the training and executed the certification required by section III.C.
3. notification of any changes or amendments to the Policies and Procedures required by section III.B and the reasons for such changes (e.g., change in contractor policy);
4. a complete copy of the report prepared pursuant to the Independent Review Organization's billing and compliance engagement, including a copy of the methodology used.
5. Devereux's response/corrective action plan to any issues raised by the Independent Review Organization.
6. a summary of material deficiencies reported throughout the course of the previous twelve (12) months pursuant to section III.H.
7. a report of the aggregate overpayments that have been returned to the Federal health care programs that were discovered as a direct or indirect result of implementing this CIA. Overpayment amounts should be broken

- down into the following categories: Medicare, Medicaid (report each applicable state separately) and other Federal health care programs;
8. a copy of the confidential disclosure log required by section III.E;
 9. a description of any personnel action (other than hiring) taken by Devereux as a result of the obligations in section III.F;
 10. a summary describing any ongoing investigation or legal proceeding conducted or brought by a governmental entity involving an allegation that Devereux has committed a crime or has engaged in fraudulent activities, which is required to have been reported pursuant to section III.G. The statement shall include a description of the allegation, the identity of the investigating or prosecuting agency, and the status of such investigation, legal proceeding or requests for information; and
 11. any change in the provider identification number(s) required to be provided under #9 in the Implementation Report.

The first Annual Report shall be received by the OIG no later than one year and ninety (90) days after the effective date of this CIA. Subsequent Annual Reports shall be submitted no later than the anniversary date of the due date of the first Annual Report.

C. Certifications. The Implementation Report and Annual Reports shall include a certification by the Compliance Officer under penalty of law, that: (1) Devereux is in compliance with all of the requirements of this CIA, to the best of his or her knowledge; and (2) the Compliance Officer has reviewed the Report and has made reasonable inquiry regarding its content and believes that, upon such inquiry, the information is accurate and truthful.

VI. NOTIFICATIONS AND SUBMISSION OF REPORTS

Unless otherwise stated in writing subsequent to the effective date of this CIA, all notifications and reports required under this CIA shall be submitted to the entities listed below:

OIG:

Civil Recoveries Branch - Compliance Unit
Office of Counsel to the Inspector General
Office of Inspector General
U.S. Department of Health and Human Services
Cohen Building, Room 5527
330 Independence Avenue, SW
Washington, DC 20201
Phone: 202.619.2078
Fax: 202.205.0604

Devereux:

Allen F. Thomas, Esq.
The Devereux Foundation
444 Devereux Drive
Box 638
Villanova, PA 19085
Phone: (610) 542-3040
Fax: (610) 542-3141

VII. OIG INSPECTION, AUDIT AND REVIEW RIGHTS

In addition to any other rights OIG may have by statute, regulation, or contract, OIG or its duly authorized representative(s), may examine Devereux's books, records, and other documents and supporting materials for the purpose of verifying and evaluating: (a) Devereux's compliance with the terms of this CIA; and (b) Devereux's compliance with the requirements of the Federal health care programs in which it participates. The documentation described above shall be made available by Devereux to OIG or its duly authorized representative(s) at all reasonable times for inspection, audit or reproduction. Furthermore, for purposes of this provision, OIG or its duly authorized

representative(s) may interview any of Devereux's employees who consents to be interviewed at the employee's place of business during normal business hours or at such other place and time as may be mutually agreed upon between the employee and OIG. Devereux agrees to assist OIG in contacting and arranging interviews with such employees upon OIG's request. Devereux's employees may elect to be interviewed with or without a representative of Devereux present.

VIII. Document and Record Retention

Devereux shall maintain for inspection all documents and records relating to reimbursement from the Federal health care programs or to compliance with this CIA for six (6) years (or longer if otherwise required).

IX. DISCLOSURES

Subject to HHS's Freedom of Information Act ("FOIA") procedures, set forth in 45 C.F.R. Part 5, the OIG shall make a reasonable effort to notify Devereux prior to any release by OIG of information submitted by Devereux pursuant to its obligations under this CIA and identified upon submission by Devereux as trade secrets, commercial or financial information and privileged and confidential under the FOIA rules. Devereux shall refrain from identifying any information as trade secrets, commercial or financial information and privileged and confidential that does not meet the criteria for exemption from disclosure under FOIA.

X. BREACH AND DEFAULT PROVISIONS

Devereux is expected to fully and timely comply with all of the obligations herein throughout the term of this CIA or other time frames herein agreed to.

A. Stipulated Penalties for Failure to Comply with Certain Obligations. As a contractual remedy, Devereux and OIG hereby agree that failure to comply with certain obligations set forth in this CIA may lead to the imposition of the following monetary

penalties (hereinafter referred to as "Stipulated Penalties") in accordance with the following provisions.

1. A Stipulated Penalty of \$2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day, beginning ninety (90) days after the effective date of this CIA and concluding at the end of the term of this CIA, Devereux fails to have in place any of the following:

- a. a Compliance Officer;
- b. written Code of Conduct;
- c. written Policies and Procedures;
- e. a training program; and
- f. a Confidential Disclosure Program;

2. A Stipulated Penalty of \$2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day Devereux fails meet any of the deadlines to submit the Implementation Report or the Annual Reports to the OIG.

3. A Stipulated Penalty of \$2,000 (which shall begin to accrue on the date the failure to comply began) for each day Devereux:

a. hires or enters into a contract with an Ineligible Person after that person has been listed by a federal agency as excluded, debarred, suspended or otherwise ineligible for participation in the Medicare, Medicaid or any other Federal health care program (as defined in 42 U.S.C. § 1320a-7b(f)) (this Stipulated Penalty shall not be demanded for any time period during which Devereux can demonstrate that it did not discover the person's exclusion or other ineligibility after making a reasonable inquiry (as described in section III.F) as to the status of the person);

b. employs or contracts with an Ineligible Person and that person: (i) has responsibility for, or involvement with, Devereux's business operations related to the Federal health care programs or (ii) is in a position for which the person's salary or the

items or services rendered, ordered, or prescribed by the person are paid in whole or part, directly or indirectly, by Federal health care programs or otherwise with Federal funds (this Stipulated Penalty shall not be demanded for any time period during which Devereux can demonstrate that it did not discover the person's exclusion or other ineligibility after making a reasonable inquiry (as described in section III.F) as to the status of the person); or

c. employs or contracts with a person who: (i) has been charged with a criminal offense related to any Federal health care program, or (ii) is suspended or proposed for exclusion, and that person has responsibility for, or involvement with, Devereux's business operations related to the Federal health care programs (this Stipulated Penalty shall not be demanded for any time period before ten (10) days after Devereux received notice of the relevant matter or after the resolution of the matter).

4. A Stipulated Penalty of \$1,500 (which shall begin to accrue on the date the Devereux fails to grant access) for each day Devereux fails to grant access to the information or documentation as required in section VII of this CIA.

5. A Stipulated Penalty of \$1,000 (which shall begin to accrue ten (10) days after the date that OIG provides notice to Devereux of the failure to comply) for each day Devereux fails to comply fully and adequately with any obligation of this CIA. In its notice to Devereux, the OIG shall state the specific grounds for its determination that Devereux has failed to comply fully and adequately with the CIA obligation(s) at issue.

B. Payment of Stipulated Penalties.

1. *Demand Letter.* Upon a finding that Devereux has failed to comply with any of the obligations described in section X.A and determining that Stipulated Penalties are appropriate, OIG shall notify Devereux by personal service or certified mail of (a) Devereux's failure to comply; and (b) the OIG's exercise of its contractual right to

demand payment of the Stipulated Penalties (this notification is hereinafter referred to as the "Demand Letter").

Within fifteen (15) days of the date of the Demand Letter, Devereux shall either (a) cure the breach to the OIG's satisfaction and pay the applicable stipulated penalties; or (b) request a hearing before an HHS administrative law judge ("ALJ") to dispute the OIG's determination of noncompliance, pursuant to the agreed upon provisions set forth below in section X.D. In the event Devereux elects to request an ALJ hearing, the Stipulated Penalties shall continue to accrue until Devereux cures, to the OIG's satisfaction, the alleged breach in dispute. Failure to respond to the Demand Letter in one of these two manners within the allowed time period shall be considered a material breach of this CIA and shall be grounds for exclusion under section X.C.

2. *Timely Written Requests for Extensions.* Devereux may submit a timely written request for an extension of time to perform any act or file any notification or report required by this CIA. Notwithstanding any other provision in this section, if OIG grants the timely written request with respect to an act, notification, or report, Stipulated Penalties for failure to perform the act or file the notification or report shall not begin to accrue until one day after Devereux fails to meet the revised OIG approved deadline. Notwithstanding any other provision in this section, if OIG denies such a timely written request, Stipulated Penalties for failure to perform the act or file the notification or report shall not begin to accrue until two (2) business days after Devereux receives OIG's written denial of such request. A "timely written request" is defined as a request in writing received by OIG at least five (5) business days prior to the date by which any act is due to be performed or any notification or report is due to be filed.

3. *Form of Payment.* Payment of the Stipulated Penalties shall be made by certified or cashier's check, payable to "Secretary of the Department of Health and Human Services," and submitted to OIG at the address set forth in section VI.

4. *Independence from Material Breach Determination.* Except as otherwise noted, these provisions for payment of Stipulated Penalties shall not affect or otherwise set a standard for the OIG's determination that Devereux has materially breached this CIA, which decision shall be made at the OIG's discretion and governed by the provisions in section X.C, below.

C. Exclusion for Material Breach of this CIA

1. *Notice of Material Breach and Intent to Exclude.* The parties agree that a material breach of this CIA by Devereux constitutes an independent basis for Devereux's exclusion from participation in the Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)). Upon a determination by OIG that Devereux has materially breached this CIA and that exclusion should be imposed, the OIG shall notify Devereux by certified mail of (a) Devereux's material breach; and (b) OIG's intent to exercise its contractual right to impose exclusion (this notification is hereinafter referred to as the "Notice of Material Breach and Intent to Exclude").

2. *Opportunity to cure.* Devereux shall have thirty five (35) days from the date of the Notice of Material Breach and Intent to Exclude Letter to demonstrate to the OIG's satisfaction that:

- a. Devereux is in full compliance with this CIA;
- b. the alleged material breach has been cured; or
- c. the alleged material breach cannot be cured within the 35-day period, but that: (i) Devereux has begun to take action to cure the material breach, (ii) Devereux is pursuing such action with due diligence, and (iii) Devereux has provided to OIG a reasonable timetable for curing the material breach.

3. *Exclusion Letter.* If at the conclusion of the thirty five (35) day period, Devereux fails to satisfy the requirements of section X.C.2, OIG may exclude Devereux

from participation in the Federal health care programs. OIG will notify Devereux in writing of its determination to exclude Devereux (this letter shall be referred to hereinafter as the "Exclusion Letter"). Subject to the Dispute Resolution provisions in section X.D, below, the exclusion shall go into effect thirty (30) days after the date of the Exclusion Letter. The exclusion shall have national effect and will also apply to all other federal procurement and non-procurement programs. If Devereux is excluded under the provisions of this CIA, Devereux may seek reinstatement pursuant to the provisions at 42 C.F.R. §§ 1001.3001-.3004.

4. *Material Breach.* A material breach of this CIA means:

- a. a failure by Devereux to report a material deficiency, take corrective action and pay the appropriate refunds, as provided in section III.H;
- b. repeated or flagrant violations of the obligations under this CIA, including, but not limited to, the obligations addressed in section X.A of this CIA;
- c. a failure to respond to a Demand Letter concerning the payment of Stipulated Penalties in accordance with section X.B above; or
- d. a failure to retain and use an Independent Review Organization for review purposes in accordance with section III.D.

D. Dispute Resolution

1. *Review Rights.* Upon the OIG's delivery to Devereux of its Demand Letter or of its Exclusion Letter, and as an agreed-upon contractual remedy for the resolution of disputes arising under the obligation of this CIA, Devereux shall be afforded certain review rights comparable to the ones that are provided in 42 U.S.C. § 1320a-7(f) and 42 C.F.R. Part 1005 as if they applied to the Stipulated Penalties or exclusion sought pursuant to this CIA. Specifically, the OIG's determination to demand payment of

Stipulated Penalties or to seek exclusion shall be subject to review by an ALJ and, in the event of an appeal, the Departmental Appeals Board ("DAB"), in a manner consistent with the provisions in 42 C.F.R. §§ 1005.2-1005.21. Notwithstanding the language in 42 C.F.R. § 1005.2(c), the request for a hearing involving stipulated penalties shall be made within fifteen (15) days of the date of the Demand Letter and the request for a hearing involving exclusion shall be made within thirty (30) days of the date of the Exclusion Letter.

2. *Stipulated Penalties Review.* Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, the only issues in a proceeding for stipulated penalties under this CIA shall be (a) whether Devereux was in full and timely compliance with the obligations of this CIA for which the OIG demands payment; and (b) the period of noncompliance. Devereux shall have the burden of proving its full and timely compliance and the steps taken to cure the noncompliance, if any. If the ALJ finds for the OIG with regard to a finding of a breach of this CIA and orders Devereux to pay Stipulated Penalties, such Stipulated Penalties shall become due and payable twenty (20) days after the ALJ issues such a decision notwithstanding that Devereux may request review of the ALJ decision by the DAB.

3. *Exclusion Review.* Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, the only issues in a proceeding for exclusion based on a material breach of this CIA shall be (a) whether Devereux was in material breach of this CIA; (b) whether such breach was continuing on the date of the Exclusion Letter; and (c) the alleged material breach cannot be cured within the thirty-five (35) day period, but that (i) Devereux has begun to take action to cure the material breach, (ii) Devereux is pursuing such action with due diligence, and (iii) Devereux has provided to OIG a reasonable timetable for curing the material breach..

For purposes of the exclusion herein, exclusion shall take effect only after an ALJ

decision that is favorable to the OIG. Devereux's election of its contractual right to appeal to the DAB shall not abrogate the OIG's authority to exclude Devereux upon the issuance of the ALJ's decision. If the ALJ sustains the determination of the OIG and determines that exclusion is authorized, such exclusion shall take effect twenty (20) days after the ALJ issues such a decision, notwithstanding that Devereux may request review of the ALJ decision by the DAB.

XI. EFFECTIVE AND BINDING AGREEMENT

Consistent with the provisions in the Settlement Agreement pursuant to which this CIA is entered, and into which this CIA is incorporated, Devereux and OIG agree as follows:

- A. This CIA shall be binding on the successors, assigns and transferees of Devereux;
- B. This CIA shall become final and binding on the date the final signature is obtained on the CIA;
- C. Any modifications to this CIA shall be made with the prior written consent of the parties to this CIA; and
- D. The undersigned Devereux signatories represent and warrant that they are authorized to execute this CIA. The undersigned OIG signatory represents that he is signing this CIA in his official capacity and that he is authorized to execute this CIA.

ON BEHALF OF THE DEVEREUX FOUNDATION



RONALD P. BURD
President
The Devereux Foundation


2/16/00
DATE



ERIC W. SITARCHUK
Ballard Spahr Andrews & Ingersoll, LLP
Counsel for The Devereux Foundation

2/17/00
DATE

**ON BEHALF OF THE OFFICE OF INSPECTOR GENERAL
OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**



LEWIS MORRIS

Assistant Inspector General for Legal Affairs
Office of Inspector General
U. S. Department of Health and Human Services

2/16/00
DATE